# National Labor Relations Board Weekly Summary of NLRB Cases



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# <u>CASES SUMMARIZED</u> VISIT <u>WWW.NLRB.GOV</u> FULL TEXT

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Press Releases: (R-2579) Rosalind Eddins Appointed Deputy Regional Attorney in NLRB's Memphis, TN Regional Office

(R-2580) Paul Lund Named Regional Attorney in NLRB's Cleveland, OH Regional Office

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Dallas & Mavis Specialized Carrier Co. (13-CA-39115, et al.; 346 NLRB No. 27) Kenosha, WI Jan. 23, 2006. The Board adopted the administrative law judge's findings that the Respondent violated Section 8(a)(5) of the Act by failing to bargain with Teamsters Local 142 over the effects of its decision to close its Chrysler operation, which transported primarily Chrysler engines and automobile parts between facilities in Kenosha, WI and several other locations; and by transferring its dedicated run between Belvidere, IL and Toledo, OH from the terminated unit truck drivers to owner-operators or independent contractor, nonunion drivers. [HTML] [PDF]

Chairman Battista and Member Liebman affirmed the judge's findings that the Respondent violated Section 8(a)(1) by threatening plant closure and conveying the impression of surveillance of union activities, and violated Section 8(a)(3) by changing its paycheck distribution policy. Member Schaumber, dissenting in part, would dismiss the unlawful impression of surveillance allegation because he found that the statement "I heard that you [sic] all going union" does not refer to the initial organizing meeting or to any specific protected activity other than the general implication that Derrell Greene had heard about the union campaign. He also disagreed with his colleagues that the Respondent illegally changed its paycheck distribution policy, stating that the Respondent changed its policy in response to the loss of its receptionist who normally distributed paychecks.

Chairman Battista and Member Schaumber reversed the judge and dismissed the complaint allegations that the discharges of Madonna Bigheart, Leslie McCall, Dennis Rice, and John Brooks violated Section 8(a)(3). They found, contrary to the judge, that the General Counsel failed to meet his initial burden of proving the Respondent's knowledge of the discharged drivers' union activities.

Relying on *Kajima Engineering & Construction*, 331 NLRB 1604 (2000), which holds that an employer's knowledge of an employee's union activity can be inferred from the employer's knowledge of general union activity, Member Liebman would adopt the judge's finding that the Respondent knew of Bigheart, McCall, and Rice's union activities and discharged them unlawfully. With regard to the discharge of Brooks, she assumed that the General Counsel met his initial burden to demonstrate that Brooks' termination was motivated by union animus, but found that the Respondent demonstrated that it would have discharged Brooks even absent his union activity.

(Chairman Battista and Members Liebman and Schaumber participated.)

Charges filed by Teamsters Local 142; complaint alleged violation of Section 8(a)(1), (3), and (5). Hearing at Chicago, IL, Oct. 2-4, 2001. Adm. Law Judge John H. West issued his decision Dec. 31, 2001.

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Kindred Healthcare, Inc. d/b/a Mountain Valley Care and Rehabilitation Center (19-CA-29390; 346 NLRB No. 28) Kellogg, ID Jan. 23, 2006. The Board affirmed the administrative law judge's conclusions that the Respondent violated Section 8(a)(5) and (1) of the Act by withdrawing recognition and thereafter failing and refusing to recognize and bargain with the

Steelworkers International as the exclusive bargaining representative of unit employees; repudiating the parties' 2002-2005 collective-bargaining agreement and refusing to meet and bargain with the Union regarding a successor agreement; and failing to withhold and to remit to the Union dues withheld from employees' pay pursuant to valid dues-checkoff authorizations. [HTML] [PDF]

The Respondent took over the healthcare facility sometime between February 2001 and 2002 and assumed the existing collective-bargaining agreement covering unit employees. In 2002, the Respondent and the Union entered into a successor agreement, effective through February 2005, which identified the union as "United Steelworkers of America on behalf of its Local 5089-04." The predecessor contract identified the union as "United Steelworkers of America on behalf of its Local 9052."

In its April 1, 2004 letter to the Respondent, the International Union: (1) advised that "the members of USWA Local Union 5089 Unit 04 have become members of USWA Local Union 5114 Unit 06;" (2) directed the Respondent to continue forwarding monthly dues checks, payable to the International, to the International Union offices; and (3) requested the Respondent to send a duplicate copy of the "Summary of Union Dues" form to the financial secretary of Local Union 5114. In response, the Respondent stated that the letter constituted notice that "Local 5089 Unit 04, which represented its various employees was transferring its representational authority to USWA Local 5114 Unit 06," that it was "prohibited by federal law from recognizing Local 5114 and therefore decline to do so," and that "we accept Local 5089's disclaimer of interest in continuing to represent our Mountain Valley employees." Since then, the Respondent has continued to refuse all requests to recognize the International Union, to bargain with it regarding a successor agreement, and to withhold or remit union dues.

(Chairman Battista and Members Liebman and Schaumber participated.)

Charge filed by Steelworkers; complaint alleged violation of Section 8(a)(1) and (5). Hearing at Spokane, WA on March 15, 2005. Adm. Law Judge Clifford H. Anderson issued his decision March 23, 2005.

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Annalee Griffin d/b/a North Carolina License Plate Agency #18 (11-CA-20479; 346 NLRB No. 30) Goldsboro, NC Jan. 25, 2006. The Board agreed with the administrative law judge that the Respondent violated Section 8(a)(1) of the Act by terminating and thereafter refusing to reinstate Robin Haybarker, Karen Michelle Haybarker, and Kerry Haddock because they engaged in protected concerted activities during their August 12, 2004 meeting with Manager Annalee Griffin. During the meeting, the employees complained about favoritism, wages, and bonuses and told Griffin that they were considering filing a complaint about these matters with the State Department of Motor of Vehicles for which the Respondent was a contractor. [HTML] [PDF]

(Chairman Battista and Members Liebman and Schaumber participated.)

Charge filed by Robin Haybarker, an Individual; complaint alleged violation of Section 8(a)(1). Hearing at Goldsboro, April 4-5, 2005. Adm. Law Judge John H. West issued his decision June 8, 2005.

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*Teamsters Local 399* (31-CB-11179; 346 NLRB No. 32) Los Angeles, CA Jan. 26, 2006. The Board adopted the recommendations of the administrative law judge and found that the Respondent violated Section 8(b)(1)(A) of the Act by calculating dues and fees charged to objecting financial core members in a manner not reasonably designed to ensure that no portion of their fees and dues are expended for nonrepresentational purposes. [HTML] [PDF]

(Chairman Battista and Members Schaumber and Walsh participated.)

Charge filed by Hyo Chol Lim, an Individual; complaint alleged violation of Section 8(b)(1)(A). Hearing at Los Angeles on Nov. 3, 2003. Adm. Law Judge Jay R. Pollack issued his decision Jan. 6, 2004.

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### LIST OF DECISIONS OF ADMINISTRATIVE LAW JUDGES

*The Wackenhut Corp.* (Security, Police and Fire Professionals) Plymouth, MA Jan. 23, 2006. 1-CA-42113; JD-6-06, Judge David L. Evans.

*Waste Management of Wisconsin, Inc.* (an Individual) Peshtigo, WI Jan. 24, 2006. 30-CA-17000; JD(ATL)-2-06, Judge William N. Cates.

Elevator Constructors International and its Local 18 (Otis Elevator Co.) Pasadena, CA Jan. 25, 2006. 21-CB-13923, 13925; JD(SF)-04-06, Judge Gregory Z. Meyerson.

Success Village Apartments, Inc. (Auto Workers Local 376) Bridgeport, CT Jan. 25, 2006. 34-CA-11110, et al.; JD(NY)-04-06, Judge Raymond P. Green.

Carnival Carting, Inc. (Teamsters Local 813) Woodside, NY Jan. 25, 2006. 29-CA-20586, 22552; JD(NY)-05-06, Judge Joel P. Biblowitz.

Superior Protection, Inc. (Government Security Officers Local 229) Houston, TX Jan. 25, 2006. 16-CA-21399, 21495; JD(ATL)-03-06, Judge George Carson II.

*Mail Contractors of America* (Postal Workers Des Moines Area Local) Des Moines, IA Jan. 26, 2006. 18-CA-17636; JD(SF)-05-06, Judge William G. Kocol.

# NO ANSWER TO COMPLAINT

(In the following case, the Board granted the General Counsel's motion for summary judgment based on the Respondent's failure to file an answer to the complaint.)

B & B Fire Protection, Inc. (Plumbers Local 669) (5-CA-32503; 346 NLRB No. 29) Washington, DC Jan. 23, 2006. [HTML] [PDF]

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# TEST OF CERTIFICATION

(In the following case, the Board granted the General Counsel's motion for summary judgment on the grounds that the Respondent has not raised any representation issue that is litigable in this unfair labor practice proceeding.)

Enloe Medical Center (SEIU, Healthcare Workers-West) (20-CA-32748; 346 NLRB No. 31) Chico, CA Jan. 25, 2006. [HTML] [PDF]

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# LIST OF UNPUBLISHED BOARD DECISIONS AND ORDERS IN REPRESENTATION CASES

(In the following cases, the Board considered exceptions to and adopted Reports of Regional Directors or Hearing Officers)

# **DECISION AND CERTIFICATION OF REPRESENTATIVE**

All Seasons Climate Control, Inc., Norwalk, OH, 8-RC-16733, Jan. 25, 2006 (Chairman Battista and Members Schaumber and Walsh)

(In the following cases, the Board adopted Reports of Regional Directors or Hearing Officers in the absence of exceptions)

# DECISION AND CERTIFICATION OF REPRESENTATIVE

Agri Processor Co., Inc., Brooklyn, NY, 29-RC-11242, Jan. 23, 2006 (Chairman Battista and Members Liebman and Schaumber)

Montfort Brothers, Inc., Fishkill, NY, 3-RC-11617, Jan. 23, 2006 (Chairman Battista and Members Liebman and Schaumber)

# DECISION AND CERTIFICATION OF RESULTS OF ELECTION

*Hard Rock Concrete, Inc.*, Westland, MI, 7-RC-22696, Jan. 23, 2006 (Chairman Battista and Members Liebman and Schaumber)

# DECISION AND DIRECTION [that Regional Director open and count challenged ballots and take further appropriate action]

Terminal Acquisition Co. Inc., d/b/a Pro Caribe, Penuelas, PR, 24-RD-494, Jan. 26, 2006 (Chairman Battista and Members Liebman and Schaumber)

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(In the following cases, the Board denied requests for review of Decisions and Directions of Elections (D&DE) and Decisions and Orders (D&O) of Regional Directors)

McGeorge School of Law, Sacramento, CA, 20-RC-18062, Jan. 23, 2006 (Chairman Battista and Members and Schaumber and Walsh)

Clarview Nursing and Rehabilitation Center, Sligo, PA, 6-RC-12485, Jan. 25, 2006 (Chairman Battista and Member Walsh; Member Schaumber dissenting)

Curwood, Inc., a Div. of Bemis Co., Inc., Oshkosh, WI, 30-RC-6203, Jan. 25, 2006 (Chairman Battista and Members Schaumber and Walsh)

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### Miscellaneous Board Orders

ORDER [granting request to open and count challenged ballots]

Oris Automotive Parts Al, Ltd., McCalla, AL, 10-RC-15544, Jan. 25, 2006

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